

<b>Notice of Allowability</b>	Application No. <u>10/075671</u>	Applicant(s) <u>BERMANN</u>	
	Examiner <u>S. WEINSTEIN</u>	Art Unit <u>1761</u>	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to AMNOT FILED 11/24/03
  2. ☒ The allowed claim(s) is/are CLAIMS 35-44 RENUMBERED CLAIMS 1-10, RESPECTIVELY
  3. ☒ The drawings filed on 2/15/02 are accepted by the Examiner.
  4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    - a) ☐ All    b) ☐ Some\*    c) ☐ None    of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
- \* Certified copies not received: \_\_\_\_\_.
5. ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
    - (a) ☐ The translation of the foreign language provisional application has been received.
  6. ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application. **THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**


7. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
8. ☐ CORRECTED DRAWINGS must be submitted.
  - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached \_\_\_\_\_
    - 1) ☐ hereto or 2) ☐ to Paper No. \_\_\_\_\_.
  - (b) ☐ including changes required by the proposed drawing correction filed \_\_\_\_\_, which has been approved by the Examiner.
  - (c) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No. \_\_\_\_\_.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet.

9. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

- |  |   |
|--|---|
| 1 <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                             | 2 <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)                  |
| 3 <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                    | 4 <input checked="" type="checkbox"/> Interview Summary (PTO-413), Paper No. <u>4/16/04</u> |
| 5 <input type="checkbox"/> Information Disclosure Statements (PTO-1449), Paper No. _____               | 6 <input checked="" type="checkbox"/> Examiner's Amendment/Comment                          |
| 7 <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit of Biological Material | 8 <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance         |
|  | 9 <input type="checkbox"/> Other  |

  
**STEVE WEINSTEIN**  
**PRIMARY EXAMINER**    1761

### EXAMINER'S AMENDMENT

The following changes were agreed upon in a telephone interview with Mr. Egbert on 4/16/04.

Claims 21 - 34 have been cancelled and new claims 35 - 44 have been added as follows:

35. A device for dispensing a sandwich comprising:

a tubular body having an oval cross-section dimensioned and shaped to receive the sandwich, said tubular body having a slot extending longitudinally along and through a wall of said tubular body;

a disk member positioned interior of said tubular body, said disk member having an arm extending outwardly therefrom, said arm extending outwardly of said tubular body through said slot, said wall of said tubular body being flexible, said tubular body having a closed end and an open end, said disk member positioned adjacent said closed end; and

a guide rod non-centrally positioned entirely within said tubular body spaced from and adjacent to said wall of said tubular body, said guide rod passing through a portion of said disk member such that said disk member is slidably attached to said guide rod, said guide rod comprising a plurality of fixing elements, said plurality of fixing elements being suitable for retaining said disk member at desired positions within said tubular body when said disk member is moved along a length of said guide rod, such that when the sandwich is placed in said tubular body and abuts said disk member, new portions of the sandwich become

exposed at said open end of said tubular body when said arm is moved along said slot toward said open end, thus moving said disk member and the sandwich.

36. The device of Claim 35, said disk member being a solid planar member extending transverse to a longitudinal axis of said tubular body.

37. The device of Claim 35, said slot comprising:

a first slot extending along and through said wall of said tubular body;  
and

a second slot extending along and through said wall of said tubular body on an opposite side of said tubular body from said first slot.

38. The device of Claim 37, said arm comprising:

a first arm extending through said first slot; and  
a second arm extending through said second slot.

39. The device of Claim 35, said guide rod extending for less than an entire length of said tubular body.

40. The device of Claim 35, further comprising:

a spring hook affixed to an exterior surface of said tubular body.

41. A device for dispensing a sandwich comprising:

a tubular body having a slot extending longitudinally and through a wall of said tubular body, said tubular body dimensioned and shaped to receive the sandwich therein, said tubular body having a closed end and an open end;

a disk member positioned interior of said tubular body, said disk member having an arm extending outwardly therefrom, said arm extending outwardly of said tubular body through said slot, said disk member positioned adjacent said closed end; and

a fixing means positioned interior of said tubular body, said fixing means for setting a position of said disk member within said tubular body along a length of said tubular body, said fixing means comprising a guide rod having a ratcheted surface, said disk member having a hole through which said guide rod extends so that the disk member is slidable along said guide rod, said guide rod being non-centrally positioned within said tubular body adjacent to and spaced from said wall of said tubular body, said guide rod extending entirely within said tubular body, said fixing means being suitable for retaining said disk member at desired positions within said tubular body when said disk member is moved along a length of said guide rod, such that when the sandwich is placed in said tubular body and abuts said disk member, new portions of the sandwich become exposed at said open end of said tubular body when said arm is moved along said slot toward said open end, thus moving said disk member and the sandwich.

42. The device of Claim 41, said tubular body having an oval cross-section, said wall of said tubular body being flexible.

43. The device of Claim 41, said disk member being a solid planar member extending transverse to a longitudinal axis of said tubular body.

44. The device of Claim 41, said slot comprising:

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a first slot extending along and through said wall of said tubular body and a second slot extending along and through said wall of said tubular body on an opposite side of said tubular body from said first slot, said arm comprising a first arm extending through said first slot and a second arm extending through said second slot.

*Steve Weinstein*  
STEVE WEINSTEIN  
PRIMARY EXAMINER 1761  
4/16/04

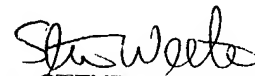
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## REASONS FOR ALLOWANCE

The art taken singly under 35USC102 or taken as a whole under 35USC103 does not fairly teach a dispensing device that employs both a disk member that is moved in a tubular body by manipulating an arm that extends from the disk member through a slot in the tubular body and a guide rod plus fixing elements, wherein the guide rod is non-centrally positioned within the tubular body, with the guide rod positioned spaced from but adjacent to the tubular body, and with the disk member being slidable along the disk member since the guide rod passes through a portion of the disk member.

Safianoff(3,078,011), newly cited but not applied, discloses a follower element that is movable along a threaded guide rod in a triangular cross-sectionally shaped container. Although one could argue that for the specific shape of the container, the guide rod is centrally positioned, one could also argue otherwise. See figures 2-4 in this regard. In any case, whether the guide rod of Safianoff is readable on being non-centrally positioned or not, the guide rod of Safianoff is not seen to be adjacent the side wall and more importantly Safianoff teaches a different means to move the disk member and does not teach the arm and slot arrangement. It would not have been obvious to modify Safianoff and substitute for Safianoff's ratcheted wheel and threaded guide rod connected thereto, the arm and slot arrangement because the art taken as a whole has no recognition of employing the arm and slot arrangement for a disk that slides on a guide rod that passes through it which also have fixing position elements; instead only teaching a disk arm and a slot with no guide rod.

The remainder of the newly cited references on the USPTO 892 form are cited as art of interest.

  
STEVE WEINSTEIN  
PRIMARY EXAMINER 1761  
4/16/04